In the High Court of Judicature at Madras

Dated: 05.02.2002

Coram:

The Hon'ble Mr.B.Subhashan Reddy, Chief Justice.

and

The Hon'ble Mr.Justice K.P.Sivasubramaniam

Writ Appeal No.2199 of 2001 and W.A.M.P.No.17354 and W.A.M.P.No17355 of 2001

Kudiyeruppor Nala Sangam, represented by its President
P.Karuppasamy Appellant

/versus/

1.The Commissioner, Land Assignment, Chennai-5.

2.The District Collector, Thiruvallur District.
Respondents.

Appeal filed under Clause 15 of the Letters

Patent against the order in W.P.No.3045 of 2001 dated

13.9.2001.

! For appellant : Mr.N.G.R.Prasad
for Mr. R.Sankarasubbu

^ For respondents : Miss. T.Kokilavane
Government Advocate -----

: JUDGMENT.

K.P.SIVASUBRAMANIAM,J. Writ Petition No.21111 of 2000 was filed

by the Principal of S.R.M. Dental College, praying for directions to the respondents/ Governmental and local authorities to remove all the existing encroachments between the whole stretch of Bharathi Salai and Thiruvalluvar Salai in Ramavaram, Chennai.

2.Writ Petition No.3045 of 2001 was filed by Kudiyiruppor Nala Sangam, representing the interest of the occupants in the disputed area (appellant herein) praying for directions to the respondents to issue patta to the members of Sangam, claiming to be in possession of the area for more than 10 years.

3.During the hearing of both the writ petitions before the learned single Judge, an offer was made by the Government to allot alternate site to all the members of the petitioner/Sangam in Survey No.239/2, Eri Poramboke, Ramavaram Village, subject to the members vacating their occupation of the disputed area. After several adjournments at the instance of the appellant/Sangam, finally, an affidavit dated 10.9.20 01 had been filed accepting the alternate site provided by the Government subject to the availability of the land in Survey No.239/2. The learned single Judge had also recorded a finding that the admitted position was that the encroachments in Tiruvallur Salai had already been evicted.

4. Consequently, the learned single Judge dismissed W.P.No.21111 of 2000 filed by the College on the ground that as a result of the removal of the encroachments, any direction for removal did not arise. As regards W.P.No.3045 of 2001 filed by the Sangam/apppellant, the learned Judge held that in view of the offer of the Government to allot alternate site in Survey No.239/2 and the acceptance of the same by the Sangam, it was not necessary to go into the merits and that it was sufficient to direct the Government to provide alternate site to the members by demarcating the plots on or before 19.9.2001 and that the members of the Sangam shall occupy the plots on or before 26.9.2001. It was further directed that in the event of the failure to remove the encroachments and vacating the lands, the District Collector was at liberty to evict and remove all the encro achments and the members of the petitioner Sangam will have no right to seek for any alternate accommodation. The Sangam has now come forward with the present appeal.

5. Mr.N.G.R.Prasad appearing for the appellant contends that the alternate site offered by the Government was not at all suitable for certain reasons and that in fact there was no adequate space to accommodate the members of the Sangam. The place was actually ear-marked for the formation of the Metro Rail Project. According to him respondents have not pleaded the

correct facts before the learned single Judge as regards the actual topography of the land in Survey No.239/2 and had played a fraud on the Court. We have also perused the affidavit filed on behalf of the appellant in support of their contentions. Learned Government Pleader contends that the appeal itself is not maintainable as the same is directed against a consent order. The appellant has not stated correct facts regarding the topography of the land and that there was sufficient space to accommodate all the members of the Sangam as undertaken by the Government. The action of the appellant lacks bona fides. In fact most of the, members have agreed to take over the alternate allotment and had moved over to the allotted site and that trouble was being created only by one or two persons who had very strong personal and vested interest and they were not actually pleading the cause of the poor. The disputed portion is a public road which had to be cleared as a result of the growing traffic and the encroachers cannot claim any fundamental right to occupy a road resulting in blocking the traffic.

6. Mr.K.S.Natarajan apearing for the College has also reitereated the submissions of learned Government Pleader.

7. We have considered the rival contentions and also perused the affidavits filed by both sides. In view of the nature of disposal of this appeal, we decline to enter into the merits of the contentions raised by both parties.

It is sufficient to point out that the order of the learned single Judge is in essence a consent order and the learned single Judge had also indicated that he was not inclined to go into the merits of the case in view of the offer and acceptance of the alternate site. The fact that the disputed area is classified in the Revenue records as "Vandipatthai and Neer nilai poramboke" (cart track and Eri Poromboke) is admitted by the appellant vide their affidavit in W.A.M.P.No.17355 of 2001. Therefore, the appellants cannot claim any vested right to remain in possession of the area when the same is required by the Government for regulating the increased traffic. Rightly the Sangam had agreed to accept the alternate site offered by the Government and had accepted an order from the learned single Judge. In the said background we are unable to appreciate the Sangam filing an appeal. If they have any genuine grievance about the feasibility of the offer made by the Government on any ground, the proper course would be to have approached the learned single Judge himself. Whatever grounds which are now pleaded before us namely, that there was no adequate space available for allotment, that the Government had not placed all the relevant facts about the actual topography of the land or that the Government had played fraud on the court etc. are all matters which should have

been brought to the notice of the learned single Judge himself either by way of Review or for clarification. If there is any violation of or non-compliance of the order of the learned single Judge, there are other remedies open to the appellants. On the face of the allegations projected before us, it will not be in consonance with the judicial decorum to entertain the above appeal.

8. A further contention which was raised by the appellant is to the effect that the College itself had encroached a very large extent of public land in the area and that the Government was adopting double standards in implementing the alleged action for removal of the encroachments. In the affidavit in support of W.A.M.P.No.17354 of 2001, the appellants have contended that the College authorities had encroached the Government land for more than 10 acres and had even requested the assignment of the land and that the said request was rejected by the authorities. The College authorities have also put up several buildings unauthorisedly without planning approval. In this context, to our specific question to the learned counsel representing the College as to whether the said allegations are true, he was unable to furnish any definite reply in the absence of instructions.

9. This issue had not been gone into by the learned single Judge presumably because either the said issue had not been raised before him or that he had specifically decided not to go into the merits of the mutual contentions considering that the writ petitions were being disposed of only on the basis of the offer and acceptance of the alternate site. Therefore, the learned single Judge had no occasion or necessity to deal with said issue.

10. It is needless to point out that the Government cannot adopt double standards in enforcing law and order and clearing of illegal encroachments. If the encroachment of public land by the poor is bad, illegal occupation of such land by rich people and Institutions would be worst. The very reason or justification to take steps to clear the encroachments, loses its credibility if the Government turns a blind eye to the illegal occupation of public lands by rich and well-todo persons. Courts are bound to respond positively and with even hands while dealing with such allegations.

It will be useful to bear in mind that it is the College authorities who had approached this Court first with the complaint of illegal encroachment against the members of the Sangam. If they are themselves guilty of encroachment, they should also face the consequences. Therefore, the second respondent is directed to take positive steps in the said direction if the College is found to be in illegal occupation of

any public land. The second respondent is directed to take steps in accordance with law and after due notice and hearing of the College authorities and the actual occupants in possession of the encroached portions and to evict them from such illegal occupation. These directions shall be complied within a period of three months from the date of receipt of a copy of this order.

11. In the result, the above Writ Appeal is dismissed with the above observations.

No costs. Index: yes/no. sai/-
(B.S.R.,C.J.)(K.P.S.J.)
05.02.2002

To 1. The Commissioner, Land Assignment, Chennai-5.

2. The District Collector, Thiruvallur District. + 1 cc to M/s. Anand Dasgupta & Sagar on payment of charges (SR.No.99910) + 1 cc to Mr.S.Packiaraj, on payment of charges. (SR.No.99889) + 1 cc to Ms.T.Kokilvane, Govt. Advocate, on payment of charges. (SR.No.99742)

The Hon'ble the Chief Justice
and
K.P.Sivasubramaniam,J.

Pre-delivery
Judgment in
W.A.No.2199 of 2001
Delivered on :